

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 15437-0606		
Pursuant to 37 CFR 1.8(a)(1)(ii) I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the electronic filing system in accordance with 37 CFR §§1.8(1)(4) and 1.8(a)(1)(i)(C) on the date indicated below and before 9:00 PM PST. on _____ Signature / _____ Typed or printed name _____	Application Number 10/731,889	Filed December 8, 2003		
First Named Inventor Martin Patterson				
<table style="width: 100%;"> <tr> <td style="width: 50%;"> Art Unit 2442 </td> <td style="width: 50%;"> Examiner Benjamin A. Ailes </td> </tr> </table>			Art Unit 2442	Examiner Benjamin A. Ailes
Art Unit 2442	Examiner Benjamin A. Ailes			
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.				
This request is being filed with a notice of appeal. XXX				
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided. XXX				
I am the				
<input type="checkbox"/> applicant/inventor.	_____ /Samuel S. Broda #54802/ Signature			
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	_____ Samuel S. Broda Typed or printed name			
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>54,802</u>	_____ (408) 414-1080 Telephone number			
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34	_____ February 9, 2009 Date			
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.				

<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Martin Patterson, et al)	Confirmation No.:	4667
)		
Serial No.:	10/731,889)	Examiner:	Benjamin A. Ailes
)		
Filing Date:	December 8, 2003)	Art Unit:	2442

For: APPROACH FOR PROVISIONING NETWORK DEVICES

Via EFS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In the Final Office Action mailed on December 9, 2008, the Examiner rejected all of the pending claims based upon various references. Applicants believe that these rejections were clearly improper and without basis, and respectfully request all rejections be reviewed and withdrawn.

REJECTIONS UNDER 35 U.S.C. §102

The Final Office Action rejected independent Claims 4, 13, and 22 under 35 U.S.C. §102(e) as being allegedly anticipated by U.S. Patent 7,321,936 (“Zimmerman”). Claim 4 recites the following (emphasis added):

A method for configuring a network device in a network, the method comprising the machine-implemented steps of:

supplying first boot data to the network device over the network, wherein processing of the first boot data by the network device during a first startup of the network device causes the network device to execute a provisioning process over the network;

instructing the provisioning process to supply image data to the network device over the network, wherein the image data includes one or more computer programs; and supplying second boot data to the network device over the network, wherein processing of the second boot data by the network device during a second startup of the network device causes the network device to execute at least one of the one or more computer programs contained in the image data.

Current claim 4 includes the feature of “supplying first boot data to the network device over the network, wherein processing of the first boot data by the network device during a first startup of the network device causes the network device to execute a provisioning process over the network;” this feature is recited in independent Claims 1, 3, 13, and 22.

Regarding the rejection of current Claim 4, the Office action at page 3 correlates the supply of first boot data to the network device over the network to Zimmerman at column 3 lines 13-18, with the boot data causing the network device to execute a provisioning process over the network correlated to Zimmerman at column 3 lines 22-31.

The complete sentence of Zimmerman at column 3 lines 13-18 appears in the context of the summary of the invention and states:

In certain embodiments, the present invention provides a system for and method of booting an O/S on one or more client PCs from a network server employing virtual disk emulation and the streaming method to multicast or broadcast prearranged portions of the disk image from the server to one or more clients.

The three sentences of Zimmerman at column 3 lines 22-31 appear in the context of the summary of the invention and state (emphasis added):

Requests for disk access in the early stage of the boot process will initially be redirected to the network server from each client using the **PXE service**. The PXE code will facilitate establishment of the initial virtual connection between

each client and the server, allowing the server to be seen as another client drive. **The PXE code facilitates downloading of additional emulation code**, which in turn downloads O/S code that facilitates downloading of the portions of the disk image to be transmitted.

However, even if Zimmerman uses the PXE code to facilitate “downloading of additional emulation code,” the PXE code is not supplied to the client over the network, as appears in Applicants’ claimed feature. Rather, the PXE code is hardwired on an OPROM residing on each client. See Figs. 1-2 (PXE 66 stored on OPROM 64) and corresponding text at column 5 lines 29-32. Therefore, Zimmerman fails to disclose or suggest “supplying first boot data to the network device over the network, wherein processing of the first boot data by the network device during a first startup of the network device causes the network device to execute a provisioning process over the network” as appearing in Applicants’ claimed method, because while the PXE code may initiate the provisioning process, the PXE code is not supplied to the client over the network.

REJECTIONS UNDER 35 U.S.C. §103

The Final Office Action also contained the following rejections under 35 U.S.C. §103(a):

- a) claims 1-3, 5, 8-12, 14, 17-21, 23, and 26-30 rejected as being allegedly unpatentable over Zimmerman, in view of U.S. Patent 6,223,218 (“Iijima”); and
- b) claims 6-7, 15-16, and 24-25 rejected as being allegedly unpatentable over Zimmerman, in view of Iijima, and further in view of U.S. Patent 7,069,428 (“Miyamoto”).

Regarding Iijima, Iijima discloses a VLAN configuration scheme in which VLAN information of a switching hub is maintained. See Figs. 1-2. However, the tracking of

configuration information of the infrastructure of a network yields no disclosure or suggestion regarding “supplying first boot data to the network device over the network, wherein processing of the first boot data by the network device during a first startup of the network device causes the network device to execute a provisioning process over the network.”

Finally, the system of Miyamoto relies upon each client having a “PXE card” and thus has the same deficiency as Zimmerman as commencing the provisioning process via a hardwired card. Accordingly, as no combination of {Zimmerman, Iijima, Miyamoto} disclose or suggest at least one feature common to all independent claims, no combination of the references can disclose or suggest any dependent claim, and Applicants respectfully request reconsideration and withdrawal of all rejections based on anticipation or obviousness.

CONCLUSION

As made clear by the above arguments, the rejections made in the Final Office Action mailed on December 9, 2008, are clearly not proper and without basis. Hence, Applicants respectfully request that these rejections be reviewed and withdrawn. Applicants further request that a Notice of Allowance be issued.

Respectfully submitted,
HICKMAN PALERMO TRUONG & BECKER LLP

Dated: February 9, 2009

/Samuel S. Broda #54802/
Samuel S. Broda
Reg. No. 54,802

2055 Gateway Place, Suite 550
San Jose, California 95110-1089
Telephone No.: (408) 414-1239
Facsimile No.: (408) 414-1076